LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
AUG 31 1966
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

ZERO MANUFACTURING COMPANY, INC.,
Petitioner,

v.

MISSISSIPPI MILK PRODUCERS ASSOCIATION,
Respondent.

No. 416.

BRIEF

In Opposition to Petition for Certiorari.

EDMUND C. ROGERS,
JOHN T. ROGERS,
KINGSLAND, ROGERS, EZELL, EILERS & ROBBINS,
121 South Meramec Avenue,
St. Louis, Missouri 63105,
Attorneys for Defendant-Respondent.

ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

ZERO MANUFACTURING COMPANY, INC., Petitioner, v. MISSISSIPPI MILK PRODUCERS ASSOCIATION, Respondent.	No. 416.

BRIEF

In Opposition to Petition for Certiorari.

STATEMENT.

The Petition for Certiorari should be denied because it presents no question of such broad and general interest as should be considered by the Supreme Court. The case is only a conventional patent case wherein two patents were held invalid because of obviousness. The decision of the Fifth Circuit Court of Appeals was entered on March 22, 1966, subsequently to this Supreme Court's decisions in **Graham v. John Deere Company**, 383 U. S. 1, 15 L. Ed. 2d 545, and **United States v. Adams**, 383 U. S. 39, 15 L. Ed. 2d 572. It discussed these cases and was

based explicitly thereon. The petition presents no new issue for consideration by the Supreme Court.

The patents involve bulk milk vacuum tanks. The first patent claims patentability in refrigerating a milk tank. In September 1952, when petitioner filed its patent application, there simply was no invention in refrigerating a milk tank by applying an old refrigeration system already previously used on a bulk milk tank, to an old bulk milk vacuum tank. The Trial Court so held, and the Court of Appeals affirmed.

Petitioner's other patent in suit was directed to the idea of putting a hole through the cylindrical side wall of the tank to provide access for cleaning and inspection. The Trial Court held that such an opening was shown in United States Patent No. 1,437,857 granted to Nitch and that there was no invention in putting such an opening in a milk tank. The Court of Appeals agreed.

ARGUMENT.

The petitioner attacks the decisions below primarily on the ground of asking the Supreme Court to judge the credibility of an expert witness in a particular case. This the Supreme Court is hardly in a position to do, and this involves no general question of national interest. Furthermore, how can it be assumed that the testimony of a particular witness controlled the decisions of the Trial Court and Court of Appeals? Finally, the expert was fully qualified in the art of refrigerating milk tanks, and his testimony was correct.

Petitioner's statement argues commercial success of the petitioner. The Courts below were advised of this but properly and conventionally applied the rule that commercial success cannot convert the obvious into a patentable invention.

In conclusion, it is submitted that this is a straightforward and very conventional patent infringement case already decided against the petitioner, upon the latest decisions of this Supreme Court in patent cases, and no new issue is presented to the Supreme Court for consideration, nor is any question raised of broad general interest as distinguished from the private dispute between two litigants.

Respectfully,

EDMUND C. ROGERS,
JOHN T. ROGERS,
KINGSLAND, ROGERS, EZELL, EILERS & ROBBINS,
121 South Meramec Avenue,
St. Louis, Missouri 63105,
Attorneys for Defendant-Respondent.